

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 7th day of
September, 2016.

In the Matter of The Empire District Electric)
Company, Liberty Utilities (Central) Co. and)
Liberty Sub Corp. Concerning an Agreement and)
Plan of Merger and Certain Related Transactions)

File No. EM-2016-0213

**ORDER APPROVING STIPULATIONS AND AGREEMENTS AND
AUTHORIZING MERGER TRANSACTION**

Issue Date: September 7, 2016

Effective Date: October 7, 2016

On March 16, 2016, The Empire District Electric Company (“Empire”), Liberty Utilities (Central) Co. (“LU Central”) and Liberty Sub Corp. (collectively, “Applicants”) filed a joint application asking the Commission to approve a transaction under an Agreement and Plan of Merger in which Liberty Sub Corp. will be merged with and into Empire with Empire as the surviving corporation. As a consequence of the merger, LU Central would acquire all of the common stock of Empire.

Stipulations and Agreements

The Applicants filed separate non-unanimous stipulations and agreements with each of the following parties:

- The City of Joplin, Empire District Retired Members & Spouses Association LLC, Laborer’s International Union of North America, and International Brotherhood of Electrical Workers Locals 1464 and 1474 on July 19, 2016 (collectively, “Intervenor Agreements”);

- The Office of the Public Counsel, filed on August 23, 2016, which also includes as Appendix A the stipulation and agreement with Staff filed on August 4, 2016 (collectively, “OPC Agreement”);
- The Empire District Electric SERP Retirees, filed on August 23, 2016 (“EDES SR Agreement”);
- Missouri Department of Economic Development-Division of Energy and Renew Missouri, filed on August 24, 2016 (“DE/Renew Missouri Agreement”), which amends a previously filed stipulation and agreement by those parties; and
- International Brotherhood of Electrical Workers Locals 1464 and 1474, filed on August 26, 2016 (“IBEW Agreement”), which amends the stipulation and agreement between those parties previously filed on July 19, 2016.

The Commission approved the Intervenor Agreements on August 10, 2016. The Commission conducted an on-the-record proceeding regarding the OPC Agreement, EDES SR Agreement, DE/Renew Missouri Agreement and IBEW Agreement (collectively, “Pending Agreements”) on August 30, 2016. At that proceeding, the Commission questioned the parties about the terms of the Pending Agreements and gathered additional information about the merger transaction and the conditions set forth in the Pending Agreements. The Pending Agreements constitute a settlement of the respective parties’ issues relevant to the application filed by the Applicants in this matter. The Pending Agreements all describe conditions to the merger transaction proposed in the Applicants’ application, which is subject to Commission approval.

The Pending Agreements are non-unanimous in that they were not signed by all parties. However, Commission Rule 4 CSR 240-2.115(2) provides that other parties have

seven days in which to object to a non-unanimous stipulation and agreement. If no party files a timely objection to a stipulation and agreement, the Commission may treat it as a unanimous stipulation and agreement. More than seven days have passed since the Pending Agreements were filed, and no party has objected. Therefore, the Commission will treat the Pending Agreements as unanimous stipulations and agreements. After reviewing the Pending Agreements, the Commission independently finds and concludes that the Pending Agreements are a reasonable resolution of the issues addressed by the Pending Agreements and that such Pending Agreements should be approved. The Commission will also grant the motion to modify the Commission's order issued on August 10, 2016, which approved the stipulation and agreement between the Applicants and IBEW Locals 1464 and 1474.

Merger Transaction

Empire is an "electrical corporation", a "gas corporation", a "water corporation", and a "public utility," as defined in Sections 386.020(15), (18), (59), and (43), respectively, and is subject to the jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. Empire must by law obtain the authorization of the Commission before consummating the transaction in accordance with the Agreement and Plan of Merger.¹ In evaluating the proposed merger transaction, the Commission must determine if the merger is "not detrimental to the public".² The Commission has stated in prior cases that it "may not withhold its approval of the proposed transaction unless the Applicants fail in their burden to demonstrate that the transaction is

¹ Section 393.190.1, RSMo 2000.

² *State ex rel. City of St. Louis v. Public Service Commission of Missouri*, 335 Mo. 448, 460, 73 S.W.2d 393, 400 (1934).

not detrimental to the public interest, and detriment is determined by performing a balancing test where attendant benefits are weighed against direct or indirect effects of the transaction that would diminish the provision of safe or adequate of service or that would tend to make rates less just or less reasonable.”³

After reviewing the Applicants’ joint application, the testimony filed in this case, and the reasonable conditions imposed on the merger transaction by the Intervenor Agreements and Pending Agreements, the Commission independently finds and concludes that the merger transaction contemplated by the Agreement and Plan of Merger is not detrimental to the public and should be authorized.

THE COMMISSION ORDERS THAT:

1. The *Stipulation and Agreement* between the Applicants and the Office of the Public Counsel filed on August 23, 2016, including the stipulation and agreement between the Applicants and Staff filed on August 4, 2016 and incorporated therein as Appendix A, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment A and incorporated herein.

2. The *Stipulation and Agreement as to EDESR* filed on August 23, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The

³ *In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power & Light Company, and Aquila, Inc., for Approval of the Merger of Aquila, Inc., with a Subsidiary of Great Plains Energy Incorporated and for Other Related Relief*, Report and Order, Case No. EM-2007-0374, p. 229-232, citing *In the Matter of the Application of Union Electric Company, d/b/a AmerenUE, for an Order Authorizing the Sale, Transfer and Assignment of Certain Assets, Real Estate, Leased Property, Easements and Contractual Agreements to Central Illinois Public Service Company, d/b/a AmerenCIPS, and, in Connection Therewith, Certain Other Related Transactions*, Case No. EO-2004-0108.

signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment B and incorporated herein.

3. The *Amended Stipulation and Agreement as to Division of Energy and Renew Missouri* filed on August 24, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment C and incorporated herein.

4. The *Amended Stipulation and Agreement as to IBEW 1464 and IBEW 1474* filed on August 26, 2016, is approved as a resolution of the issues addressed in that stipulation and agreement. The signatory parties are ordered to comply with the terms of the stipulation and agreement. A copy of the stipulation and agreement is attached to this order as Attachment D and incorporated herein.

5. The Applicants and International Brotherhood of Electrical Workers Locals 1464 and 1474's *Motion to Modify Order Approving Stipulations and Agreements* is granted. The Commission's *Order Approving Stipulations and Agreements* issued on August 10, 2016 is modified to replace the *Stipulation and Agreement as to IBEW 1464 and IBEW 1474* filed July 19, 2016 with the *Amended Stipulation and Agreement as to IBEW 1464 and IBEW 1474* approved in Ordered Paragraph 4 above as Attachment D.

6. The Applicants are authorized to consummate the transaction described in their joint application in accordance with the terms and conditions of the Agreement and Plan of Merger and all other transaction-related instruments, and to take any and all other

actions as may be reasonably necessary and incidental to the performance of the transaction.

7. LU Central and Liberty Sub Corp. are authorized to acquire all of the stock of Empire pursuant to the terms of the Agreement and Plan of Merger.

8. Empire is authorized to merge with Liberty Sub Corp. with Empire being the surviving corporation, as more particularly described in the Agreement and Plan of Merger.

9. This order shall become effective on October 7, 2016.



BY THE COMMISSION

A handwritten signature in cursive script, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Hall, Chm., Stoll, Kenney,
Rupp, and Coleman, CC., concur.

Bushmann, Senior Regulatory Law Judge